

For Informational Purposes Only!
For Legal Advice, Consult an Attorney at Law

EVICCTIONS

To file an eviction suit, the first thing that must be present is that a **landlord / tenant relationship** must exist between the parties involved or it is a “**squatter**” that has forcibly entered the property without a lease. Another scenario is that the owner of the property wants it back for *personal use*!

VACATE NOTICE

There is a legal requirement within the Texas Property Code. It requires that the owner/landlord must give the tenant a *written vacate notice* prior to filing the eviction suit. It does not matter whether the lease was written or oral in nature. The most common is a *three (3) day notice to vacate*. This is required when; non-payment of rent has occurred, a lease violation has occurred, etc.. The *thirty (30) day notice to vacate* is required when the owner wants the property back for personal use or has bought the property at a foreclosure sale and the tenant is current on their rent. The landlord or their agent may deliver the notice or you may in some instances get the constable to deliver the notice for a fee. Remember that the notice is for the full amount of required time and when delivery occurs the date and time is noted upon the copy retained. The notice may be for a different amount of days, if stated within a written lease, and the lease is acknowledged by both parties.

Lock-outs by the landlord will not be discussed here, however it is ridiculous for a landlord to give the tenant a vacate notice, then lock-out the tenant. How can the tenant be expected to follow the terms of the vacate if they are locked out? The court may take a dim view of a landlord's actions under this circumstance.

EVICITION SUIT

The landlord must file for an eviction suit in the Justice of the Peace court within the precinct of the county where the rented or leased premises is located. Texas law is very clear on this and there are no exceptions. Justice Courts have exclusive jurisdiction over these matters. A suit for back rent may be joined with the eviction, however it is within the monetary limits of the J.P. Court and cannot exceed \$9,999.00.

The landlord / owner must pay the filing fee and process delivery fee for a citation to be issued. A sworn complaint will need to be completed as to the reason(s) for the

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grounds of the suit and the address where the tenant can be “served” the citation and complaint by the constable. The property that is the subject of the eviction must be described well enough so that it cannot be confused with another premises. It may even have to have a map with directions attached if there is no street address available. If the unit is a duplex or apartment, then the number or letter must be included in the address. Example: 1206 - A Pine Street, Anywhere, Texas 77777.

This is most important, so that another person will not become the victim of a wrongful eviction and create the possibility of a damage suit against the plaintiff!

The forcible citation will have a court date set by the judge, and the tenant has not less than six nor more than ten days from the listed court date to file a written answer to the allegations within the complaint. If the tenant can not be served by the constable, then the constable may at their own discretion, request by affidavit, alternate service on the tenant to the court. If the judge approves this, he will issue an order under Rule 742a to leave a copy of the citation and complaint attached to the tenant's door and mail a copy by first class mail to the same address.

Note: In order for the landlord / owner to obtain a judgment for the back rent owed, service to the tenant must occur. If it is by any other method, the judge may only award possession of the property to the landlord/owner (if they win the suit at the hearing). DO NOT get mad at the constable if they serve the tenant by alternate service. Landlord / owner does not want the tenant to continue staying in the premises while arguing over past due rent! A landlord / owner can always go back and file a small claims suit for the delinquent rent at a later date. Remember, *FUTURE* rents are being lost as well!

Keep in contact with the court as to when the hearing date is set for, AND GO TO COURT!. The judge has no alternative but to rule in favor of the party present, if the other fails to show up. If both parties are present the judge will then determine the case based upon the facts that are presented. If the tenant wins, the case is dismissed. If the plaintiff wins, the defendant / tenant, has five days to appeal the case to County Court. If the case is not appealed, the plaintiff can on the six day request and pay for the issuance of a Writ of Possession.

WRIT OF POSSESSION

A writ of possession is a court order directed to the sheriff or constable to remove the

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defendant, all occupants and their property from the premises listed within the writ, and restore the possession of the premises to the plaintiff. **THIS IS NOT AN ORDER TO SEIZE THE TENANT'S PROPERTY!** The landlord / owner must be present during the eviction of the tenant and the property. **The departments must post a written notice that the writ of possession will take place after a certain time and date, which by statute cannot be less than 24 hours.** Some departments utilize a 48 or 72 hour notice. Do not argue with them about their policy, because once it is set, it establishes a precedent, which cannot be deviated from. Law enforcement must treat all persons the same.

It is the responsibility of the landlord / owner to check the property after the time is up on the notice, to see if the tenant(s) have vacated the premises. If they have left and there are no possessions of value left on the premises, the landlord / owner may take possession of the premises. If not, then the department is notified by them and a date and time is setup to "execute" the Writ of Possession. Remember, the purpose is to restore the premises to the landlord and take reasonable care of the tenant's property. The constable is not the "clean-up crew" and has no duty to remove property that has no value. They may utilize a bonded or insured warehouseman to remove the tenant's property and to store it. If the plaintiff calls the department and requests them to continue with the writ, then the plaintiff must be present during the execution of the writ and provide direction on the type of entry (like a pass key, locksmith, etc.) to the premises. The officer has no knowledge as to what items "belong" to the premises as well as complying with the language of the writ by placing the landlord /owner in possession of the premises.

The tenant may redeem their property from the warehouseman, by paying the reasonable moving and storage fees. If the landlord / owner calls for a truck and has them arrive and the tenant is gone, the moving and storage company may bill the plaintiff for their costs. If the tenant is in the process of moving, the officer has to let them move. If the tenant arrives during the eviction, and has the means to remove the property, they can make demand on the warehouseman for their property and obtain it. Once the tenant and their property is removed, the premises is turned over to the landlord / owner and they may and should change the locks to the premises and it is now theirs. The officer must post a notice on the exterior of the premises with a copy of the inventory (if the tenant was not present during the eviction) and mail one 1st class to the tenant's last known address, so that they know where to go to redeem their

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property. The officer has no further duty, as the writ is executed.